

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

BEST MEDICAL INTERNATIONAL, INC., et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case no. 1:10cv988 (LOG/TRJ)
)	
WELLS FARGO INC, NA, as successor in interest to WACHOVIA BANK, N.A., et al.,)	
)	
)	
<i>Defendants.</i>)	

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendant, Wells Fargo Bank, N.A. (“Wells Fargo” or the “Bank”), incorrectly named in the First Amended Complaint as Wells Fargo Inc., NA,¹ and J. Kent Thompson, by counsel, and pursuant to Fed. R. Civ. P. 12(b)(6), move to dismiss the First Amended Complaint filed Plaintiffs, Best Medical International, Inc., Huestis Machine Corp., Best Industries, Inc., and Gunston Hall Realty, Inc., and Krishnan Suthanthiran.

In their First Amended Complaint, Plaintiffs purport to allege seven causes of action against Defendants: Violation of the Virginia Equal Credit Opportunity Act Against Wells Fargo (“Virginia ECOA”) (Count I); Violation of Virginia ECOA Against J. Kent Thompson (Count II); Fraud and/or Constructive Fraud (Count III); Equitable Estoppel (Count IV); Economic Duress (Count V); Breach of Fiduciary Duty (Count VI); and Negligence (Count VII). Each of the foregoing causes of action fails to state a claim and fails to state facts upon which the relief demanded can be granted. Additionally, Defendant Thompson has been named for an

¹ Plaintiffs named “Wells Fargo Inc., N.A., as successor in interest to Wachovia Bank, N.A.” as the defendant. There is no such legal entity. The proper party defendant is Wells Fargo Bank, N.A., successor-by-merger to Wachovia Bank, National Association.

improper purpose. There is no reasonable basis for Plaintiffs to expect recovery from him, and he is a nominal party and/or has been fraudulently joined. Mr. Thompson is not alleged to have undertaken any conduct outside the scope of his employment with the Bank which would give rise to any of the causes of action alleged. Therefore, the First Amended Complaint must be dismissed as a matter of law. In further support of their Motion to Dismiss, Defendants submit the accompanying Memorandum in Support of Their Motion to Dismiss.

WHEREFORE, for the foregoing reasons, Wells Fargo Bank, N.A. and J. Kent Thompson respectfully request that the Court grant their Motion to Dismiss, that the Court dismiss the First Amended Complaint with prejudice, that Defendants be awarded their attorneys' fees and costs incurred herein, and that the Court grant such further relief as it deems just and proper.

WELLS FARGO BANK, N.A.

and

J. KENT THOMPSON

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. I further certify that on the 7th day of October, 2010, I will send the foregoing by hand delivery and electronic mail to:

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